IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

WP(C).No. 1218 of 2005(T)

PETITIONER:

THEKKETHARA SWAYASHRAYA KUDIVELLA SANGAM
(REGISTERED SOCIETY UNDER TRAVANCORE-KOCHI
LITERARY, SCIENTIFIC AND CHARITABLE SOCIETIES
REGISTRATION ACT) REG.NO.366/2000 DT.3.5.2000
THEKKETHARA, PAZHAYANNOOR, THRISSUR,REPRESENTED
BY ITS SECRETARY, UMESH KUMAR, AGED 28 YEARS,
S/O. GOPI, PILLAI NIVAS, THEKKETHARA,
PAZHAYANNOOR, THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS
SRI.K.S.CHANDRIKA

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, THRISSUR.

2. THE REVENUE DIVISIONAL OFFICER, THRISSUR.

3. DEPUTY DIRECTOR OF PANCHAYATH, THRISSUR

4. THE DISTRICT OFFICER, GROUND
WATER DEPARTMENT, THRISSUR.

5. PAZHAYANNOOR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PAZHAYANNOOR
GRAMA PANCHAYATH OFFICE, PAZHAYANNOOR P.O.,
THRISSUR.

6. VIJAYAN, KALATH HOUSE,
PAZHAYANNOOR, THEKKETHARA, THRISSUR.

R6 BY ADV. SRI.K.RAMAKUMAR
R5 BY ADV.SRI.K.ANAND
R1 TO R4 BY GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.1218 OF 2005

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF REGN. CERTIFICATE OF SANGAM DT.3.5.2000

EXT.P2 – TRUE COPY OF ORDER DT.30.12.04 OF R5.

EXT.P3 – TRUE COPY OF REPORT DT.21.12.04 OF R4.

EXT.P4 – TRUE COPY OF REPRESENTATION FILED BY PETR. BEFORE R3 DT.6.1.05.

EXT.P5 – TRUE COPY OF REPRESENTATION FILED BY PETR. BEFORE R2.

RESPONDENTS' EXTS:

EXT.R5(a) – TRUE COPY OF APPLICATION DT.30.12.04

EXT.R5(B) – TRUE COPY OF FEASIBILITY REPORT DT.7.11.2002.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.1218 OF 2005

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DATED THIS THE 4th JANAUARY, 2007

J U D G M E N T

In this Writ Petition, the Thekkethara Swayashraya Kudivella Sangham challenges Ext.P2 order/no objection certificate issued by the 5th respondent-Panchayat in favour of the 6th respondent for the construction of a bore well on land belonging to the 6th respondent. The main plank of the submissions of Smt.K.S.Chandrika, counsel for the petitioner was Section 7 of the Kerala Ground Water (Control and Regulation) Act, 2002 (Act 19 of 2002). Counsel would submit by referring to Section 7(1) of the said Act that the 6th respondent was bound to seek the permission of the 4th respondent, if he wanted to construct a bore well since the Statute had been brought into effect as early as on 16.12.2003.

2. Mr.Ramakumar, counsel for the 6th respondent would submit that the State Ground Water Authority envisaged under the Statute is yet to be constituted. He would further submit that Section 7 in any event can have application only in respect of areas which are notified under the Statute. The Pazhayannoor Panchayat is yet to be notified under the Kerala Ground Water (Control and Regulation) Act and the 4th respondent cannot claim to be an officer of the State Ground Water

Authority since that Authority itself is yet to be constituted. My attention was drawn by the learned counsel to the averments in the counter affidavit submitted by his client, the 6th respondent and also by the Panchayat, the 5th respondent, which are to the effect that other bore wells are in existence in closer proximity to the bore well belonging to the petitioner-Sangham The circumstance that the petitioner is not raising even a little finger against those bore wells which are in closer proximity, according to learned counsel, will demonstrate that the instant Writ Petition is actuated by oblique motives and mala fides. Counsel also referred to the provisions of the Panchayat Raj Act and submitted that without exhausting the statutory remedies against Ext.P2, even if the petitioner has a genuine grievance, this Court will not be justified in invoking its extraordinary Constitutional jurisdiction under Article 226.

3. Smt.Chandrika, counsel for the petitioner would submit that the Government vide notification SRO.No.1155/03 notified the entire State for the purposes of Act 19 of 2002. She would refer to Section 5 of the Act and submit that the 4th respondent being an officer of the Ground Water Department is to be deemed to be an officer of the State Ground Water Authority also.

4. I find force in the submissions of Mr.Ramakumar. Obviously the State Ground Water Authority is yet to be constituted. So long as the Authority is not constituted, the 4th respondent cannot be deemed to be an officer of that Authority. In the absence of the Authority, the 6th respondent was justified in approaching the Panchayat. I do not find any infirmity with Ext.P2 either. The bore well proposed by the 6th respondent is sufficiently away from the bore well of the petitioner-Sangham. The Sangham significantly does not have any objection to several other private bore wells which are situated in closer proximity to their bore well.

The Writ Petition has to fail. The same is dismissed. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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